

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BRENDA BERGER,

Defendant.

No. 14-CR-4013-DEO

ORDER ACCEPTING  
11(c)(1)(C) REPORT AND  
RECOMMENDATION CONCERNING  
GUILTY PLEA

**I. INTRODUCTION AND BACKGROUND**

Before the Court is Magistrate Judge Leonard T. Strand's Report and Recommendation Concerning Guilty Plea (Docket No. 12, 02/06/2014).

On January 30, 2014, a one count Information (Docket No. 2) was filed in the above-referenced case. On February 6, 2014, Defendant Brenda Berger appeared before United States Magistrate Judge Leonard T. Strand and entered a guilty plea to Count One of the Information, under a binding plea agreement with the Government, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C).<sup>1</sup> The Report and

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<sup>1</sup> The plea agreement is filed under seal at Docket No. 5-1.

Recommendation states that pursuant to the terms of the plea agreement:

The court further advised the defendant that pursuant to the terms of the plea agreement, which provided that she was pleading guilty pursuant to Rule 11(c)(1)(C), Federal Rules of Criminal Procedure, she would be sentenced to a term of probation with conditions to be determined by the Court. Defendant relinquishes any claim of right to the stolen gift cards found in her possession and has agreed that those gift cards which cannot be traced to known victims, shall be donated to the Sioux City Council on Sexual Assault and Domestic Violence (CSADV) to be distributed for charitable use. As part of defendant's Rule 11(c)(1)(C) plea agreement, she has agreed to resign from her position as Rural Carrier Associate, with the United States Postal Service, in Sioux City, Iowa. Defendant shall tender her resignation before the time of her guilty plea and shall provide a copy of her resignation letter, or other proof of resignation to the Government at the time of the plea hearing . . . The defendant was also advised that the court was obligated to impose a special assessment of \$100.00 which she must pay.

Docket No. 12 at 3.

Count One of the Information charges that between January 2013 and December 2, 2013, in the Northern District of Iowa, defendant Brenda Berger, an officer and employee of the United States Postal Service, did embezzle letters, postal cards and

mail, and articles contained therein, entrusted to her or which came into her possession intended to be conveyed by mail by the United States Postal Service, and stole, abstracted and removed from such letters, postal cards and mail, cash, gift cards and other items of value contained therein, with intent to convert such items to her own use.

This was in violation of Title 18, United States Code, Sections 1709.

The Report and Recommendation (Docket No. 12) recommends that defendant Brenda Berger's guilty plea be accepted. Waivers of objections to Judge Strand's Report and Recommendation were filed by each party (Docket Nos. 13 and 14). The Court, therefore, undertakes the necessary review to accept defendant Brenda Berger's plea in this case.

## **II. ANALYSIS**

### **A. Standard of Review**

Pursuant to statute, this Court's standard of review for a magistrate judge's Report and Recommendation is as follows:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or

modify, in whole or in part, the findings or recommendations made by the magistrate [judge].

28 U.S.C. § 636(b)(1). Similarly, Federal Rule of Civil Procedure 72(b) provides for review of a magistrate judge's Report and Recommendation on dispositive motions and prisoner petitions, where objections are made as follows:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommendation decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b).

As mentioned, waivers of objections to the Report and Recommendation have been filed, and it appears to the Court upon review of Magistrate Judge Strand's findings and conclusions that there are no grounds to reject or modify them.

**IT IS THEREFORE HEREBY ORDERED** that this Court accepts Magistrate Judge Strand's Report and Recommendation (Docket No. 12), and accepts defendant Brenda Berger's plea of guilty

in this case to Count One of the Information (Docket No. 2).

At the time of sentencing, the Court will determine whether to accept the parties' Rule 11(c)(1)(C) plea agreement and the agreed upon sentence in that plea agreement pursuant to

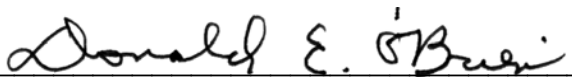
Federal Rules of Criminal Procedure 11(c)(5):

if the Court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the Court must do the following on the record and in open court (or, for good cause, in camera):

- (A) inform the parties that the Court rejects the plea agreement;
- (B) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and
- (C) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

FED. R. CRIM. P. 11(c)(5).

**IT IS SO ORDERED** this 1st day of April, 2014.

  
Donald E. O'Brien, Senior Judge  
United States District Court  
Northern District of Iowa